

Texoma Area Paratransit System, Inc.

DBE Program

Revised October 2020



**Texoma Area Paratransit
System, Inc.**

*Disadvantaged Business
Enterprise (DBE) Plan*

49 CFR Part 26

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The Texoma Area Paratransit System, Inc. (TAPS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TAPS has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TAPS has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of TAPS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The General Manager of TAPS has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the General Manager of TAPS is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by TAPS in its financial assistance agreements with the Department of Transportation.

TAPS has disseminated this policy statement to the TAPS Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Further a DBE statement is included in all RFP's issued by TAPS, and the DBE Policy Statement is posted on the TAPS website www.tapsbus.com.

TAPS Board Chairman

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

TAPS is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Publ. L. 105-178. See Attachment 7: Access to 49 CFR Part 26.

Section 26.5 Definitions *Note: additional definitions are provided in 49CFR26*

TAPS will adopt the definitions contained in Section 26.5 for this program (to include those listed below). TAPS will add and include any new/amended definitions as they are provided by USDOT.

Disadvantaged Business Enterprise or DBE means a for-profit small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. "African Americans," which includes persons having origins in any of the black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugues culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Section 26.7 Non-discrimination Requirements

TAPS will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, TAPS will not, directly or through contractual or other arrangements,

use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

TAPS will report DBE participation to the relevant operating administration, FTA, using the Uniform Report of DBE Awards or Commitments and Payments, found in Attachment B to the DBE regulation.

Reporting to DOT: 26.11(b)

TAPS will report DBE participation to the FTA on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

TAPS will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

TAPS will collect this information in the following ways:

- TAPS will include a contract clause requiring prime bidders to report the names/addresses, and other relevant information of all firms who quote to them on subcontracts.
- TAPS will include a notice in all solicitations to firms quoting on subcontracts to report information directly to the recipient.

Section 26.13 Assurances

TAPS has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

TAPS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

TAPS will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

This language is to be used verbatim.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since TAPS has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

TAPS has designated the following individual as our DBE Liaison Officer:

Shellie White, Finance Manager
TAPS Public Transit
6104 Texoma Parkway
Sherman, TX 75090
Phone: 580-775-8736
e-mail: shellie.white@transdev.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TAPS complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the TAPS Board of Directors concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes TAPS's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.

9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains TAPS's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of TAPS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions:

- Minority owned financial institutions are identified by consulting the list maintained by the Federal Reserve at <https://www.federalreserve.gov/releases/mob/> using the September 30, 2017 listing.

We will also re-evaluate the availability of DBE financial institutions every 2 years.

To date we have identified the following such institutions within the TAPS service area

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

TAPS will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from TAPS. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TAPS. This clause applies to both DBE and non-DBE subcontracts. Failure to adhere to the above referenced time frame without written approval may result in sanctions including, but not limited to, withholding of future payments, fines, or termination of contract.

Section 26.29 Retainage

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TAPS. This clause applies to both DBE and non-DBE subcontracts.

Section 26.37 Monitoring and Enforcement Mechanisms

TAPS will take the following steps in monitoring and enforcement to ensure that prompt payment and return of retainage is in fact occurring in compliance with 49 CRF Part 26.

1. TAPS will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take steps (eg., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in Part

26.109.

2. TAPS will consider similar under its own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation by a participant in our procurement activities.
3. TAPS will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract is actually performed by the DBEs. This will be accomplished through onsite inspections and interviews with the DBE contractors and subcontractors, and will occur for each contract/project on which DBEs are participating.
4. TAPS will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.31 Directory

TAPS relies on the TUCP, which maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The TUCP directory is updated on an ongoing basis. The TUCP directory is available at the following website:

<http://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html>

Based on the TUCP information, TAPS also maintains a directory of firms serving its market area which are eligible to participate as DBEs. This directory is updated at least annually. We make the Directory available as follows:

- A link to the directory is available on the TAPS website www.tapsbus.com.
- The directory may be requested in hard copy by contacting the DBELO.

The Directory may be found in Attachment 2 to this program document. NOTE* The directory is reviewed and updated each September.

Section 26.33 Overconcentration

TAPS has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

TAPS has not established a business development program. We will re-evaluate the need for such a program every September.

Section 26.39 Small Business Participation

TAPS, as an FTA recipient, created this element of the DBE program to increase small business participation in procurements. TAPS propose is to accomplish this through eliminating obstacles to small business participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontracts in direct response to regulatory requirements. In order to facilitate competition by small business concerns. The TAPS SBE Program is for all small business enterprises that meet the eligibility standards regardless of race, color, national origin or gender. The TAPS DBELO is responsible for implementing all aspects of the SBA program.

Certification

TAPS will adhere to the definitions set forth by the Texas Department of Transportation (TXDOT) of what constitutes a small business enterprise (SBE). A SBE refers to a for-profit business that is at least 51% owned by an economically disadvantaged individual and whose company meets the small business concern definition. Economically disadvantaged is to mean that a business owner's personal net worth (PNW),

excluding the primary residence and ownership interest in the applicant business, cannot exceed \$1.32 million in accordance with 49 CFR 26.67. A small business concern is defined pursuant to 13 CFR Part 121 and also does not exceed the cap on average annual gross receipts of \$22.4 million as specified in 49 CFR 26.65 (b). To determine if a contractor is a SBE, TAPS will request state certification from all successful bidders on procurements. TAPS will also check the SBE directory on the TXDOT website when it is made available. TAPS's small business participation program is race-neutral.

For information regarding the certification process interested parties may visit <http://www.txdot.gov/business/partnerships/sbe.html>

Strategy

As a small, partially rural-based demand-response transit service, TAPS rarely awards prime contracts, particularly for potentially bundled capital projects. However, TAPS will monitor future contracting opportunities to set aside portions that SBE's can reasonably compete for and perform. Examples of these types of opportunities include procurement of supplies and components as well as the small miscellaneous professional services contractors TAPS uses for audits, legal services, etc. TAPS will examine these bidding opportunities on a rolling basis as existing contracts expire; beginning immediately upon adoption of this program by the TAPS board.

Goals

TAPS will not establish specific small business goals at this time but will review opportunities for update every 2 years

SBE Directory

TAPS will rely on TXDOT's directory of certified SBE's.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

TAPS does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

Goal Formulation

In accordance with Section 26.45, TAPS will submit its triennial overall DBE goal to FTA on August 1 of the year specified by the FTA. TAPS will utilize the process established in Section 26.45(c)-(d), whereby it will establish a base figure of the relative availability of DBEs to perform work on DOT-assisted contracts, and then adjust the goal as necessary based on additional market information in our area. The process generally used by TAPS to establish overall DBE goals is as follows:

TAPS's overall goal will be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts. The goal will therefore reflect TAPS's determination of the level of DBE participation it would expect absent the effects of discrimination.

Step 1. TAPS will begin the goal setting process by determining a base figure for the relative availability of DBEs. Percentage figures derived are considered a basis from which to begin when examining all evidence available in TAPS's jurisdiction.

DBEs
Non-DBEs and DBEs

TAPS chose to utilize the number of DBEs in the TUCP Directory based on services TAPS will need in the next fiscal year to determine the base figure. TAPS counted the number of available firms eligible to perform the services needed. TAPS identified 0 commercial building contractors, 0 new car dealers, 1 electrical contractor and 0 plumbing, heating and air conditioning firms.

TAPS utilized the most recent census bureau data to determine the total number of firms in the Grayson County market area. TAPS identified 39 firms under North American Industry Classification System (NAICS) Codes 236220, 441110, 238210 and 238220. Using the data collected, TAPS determined the relation availability of DBEs for public transit contracts in the market is 2%, as indicated below:

$$\frac{1 \text{ DBEs}}{39 \text{ Non-DBEs and DBEs}} = 2\%$$

Table 1: Relative Availability DBEs by Categories of Work

<u>NAICS CODES</u>	<u>CATEGORY OF WORK</u>	<u>CERTIFIED DBEs</u>	<u>Non-DBEs and DBEs Total</u>
236220	Commercial building construction	0	10
441110	New car dealers	0	9
238210	Electrical contractors	1	10
238220	Plumbing, heating and air conditioning	0	10

Based on the above analysis, TAPS proposes to establish its FY21 overall DBE transit goal of 2% to be met through race neutral measures.

The amount of contracts expected for FY21 is \$500,000. Given this amount, TAPS has set a goal of expending \$10,000 on DBE contracts during FY21.

See Attachment 4: Overall Goal Calculations.

Step 2. Having calculated a base figure, TAPS will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at our overall goal.

Having determined a percentage figure TAPS will express our overall goal as a percentage of all FTA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that it will expend in FTA assisted contracts in the forthcoming fiscal year.

Consultation with Others

Before establishing the overall goal each year, TAPS will consult with minority, women and general contractor groups, community organizations, local chambers of commerce, and the Texas Department of Transportation to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TAPS's efforts to establish a level playing field for the participation of DBEs.

Notice

Following this consultation, TAPS will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office and on its website for 30 days following the date of the notice, and informing the public that

TAPS and TXDOT will accept comments on the goals for 45 days from the date of the notice. The notice will be provided on the TAPS website and in local newspapers. Normally, TAPS will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The TAPS overall goal submission to DOT will include a summary of information and comments received during this public participation process and any TAPS's responses thereto.

The annual overall goal will be effective on October 1 of each year, unless otherwise instructed by DOT. The time frame for use of goals established on a project basis will begin at the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Goal Setting and Accountability

If TAPS's awards and commitments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish and implement a corrective action plan with specific steps and milestones to correct the problems identified in the analysis; and
3. Maintain information/records regarding the analysis and efforts made.

Section 26.49 Transit Vehicle Manufacturers Goals

TAPS purchases its vehicles through state DOT contracts. TAPS will review the state contract for certification with the requirements of this section and maintain such certification on file. Should TAPS purchase vehicles outside of the normal state contract, it may at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of such transit vehicles.

Section 26.51 Overall Goals/Contract Goals

TAPS will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, TAPS will ensure distribution of DOT's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

TAPS will use contract goals to meet any portion of the overall goal TAPS does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of [total amount of a DOT-assisted contract] or [the Federal share of a DOT-assisted contract].

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Attachment 6.

The General Manager is responsible for determining whether a bidder/offeror has not met the contract goal and has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's

good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted

TAPS treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
- If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration

Within 30 days of being informed by TAPS that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Chairman
Texoma Area Paratransit System
6104 Texoma Pkwy.
Sherman, Texas 75090

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. TAPS will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is terminated/replaced on a contract

TAPS requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without TAPS's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to TAPS its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to TAPS prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise TAPS of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity e.g., safety.

In those instances where "good cause" exists to terminate a DBE's contract, TAPS will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, TAPS will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

"The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 7), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts."

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found at Attachment 6 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.]

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPARTS D & E- CERTIFICATION

Section 26.61 – 26.73 Certification Process

TAPS is not a certifying entity.

Section 26.81 Unified Certification Programs

TAPS is a member of a Unified Certification Program (UCP) administered by TXDOT. The TUCP meets all of the requirements of the 49 CFR 26. TUCP certifies DBE's and maintains a listing of certified DBE that includes the company name, address, telephone, contact name and type of work performed. Information on applying for certification, the certification process and the database can be found at the TXDOT website as follows: <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp>

Section 26.83 Procedures for Certification Decisions: 26.83-26.91

TAPS will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of TXDOT's UCP certification procedures is included in Attachment 2.

For information about the certification process or to apply for certification, firms should contact:

Texas Department of Transportation
Office of Civil Rights
125 East 11th St.
Austin, TX 78701

Any firm or complainant may appeal TXDOT's UCP decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

TAPS will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

Information, Confidentiality, Cooperation

TAPS will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. TAPS is a Political Subdivision of the State of Texas and is therefore subject to Texas Open Records Act/ Texas Public Information Act. Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought. Governmental bodies may charge a reasonable fee related to gathering and re-producing the requested information.

Notwithstanding any contrary provisions of state or local law, TAPS will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of TAPS or DOT. This reporting requirement also extends to any certified DBE subcontractor.

TAPS will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

ATTACHMENTS

[List and append; we recommend that a copy of the most current version of Part 26 be attached to the program so that public users to whom we send copies can have it handy; please be sure to update the available version of the regulation each year. Please also note that the list of attachments may include items in addition to those included here, and will likely not include some items included (e.g., goal setting methodology, which will typically be a separate submission.)]

Attachment 1: Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies

Attachment 4: Goal Setting Methodology

Attachment 5: Good Faith Efforts Forms

Attachment 6: Certification Forms

Attachment 7: DBE Regulation, 49 CFR Part 26

Attachment 1

**Organizational
Chart**

Board of Directors



General Manager/DBE Liaison



**Finance
Manager**

**Maintenance
Manager**

**Operations
Manager**

**HR/Safety
Coordinator**

Attachment 2

DBE Directory

For a full list of DBEs that are certified in the State of Texas, please visit the following website:

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=3434&TN=txdot>

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

TAPS has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract;
- Breach of contract action, pursuant to appropriate state laws and federal requirements; and
- Any and all other laws, statutes, regulations, etc. available to enforce the DBE requirements.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR part 26
- Enforcement action pursuant to 49 CFR part 31
- Prosecution pursuant to 18 USC 1001.

Section 26.45: Overall Goal Calculation

Amount of Goal

1. T A P S ' overall goal for FY 21__is the following: 2_% of the Federal Financial assistance we will expend in DOT-assisted contracts. *[FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles.]*

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was:

<https://txdot.txdotcms.com/FrontEnd/SearchCertifiedDirectory.asp?XID=3434&T>

N=txdot

The data source or demonstrable evidence used to derive the denominator was:

<https://data.census.gov/cedsci/table?g=0500000US48181&y=2016&n=N0600.00&tid=CBP2016.CB1600CBP&hidePreview=true>

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 2%.

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal and determined that no adjustment was needed.

Public Participation

We publish our goal information in these publications:

Local Newspapers and TAPS website.

We open a period for receiving comments from individuals or organizations and summaries of these comments will be listed on the TAPS website.

Our responses to these comments will be noted on the TAPS website.

Attachment 5

Forms 1 & 2 for Demonstration of Good Faith Efforts

Forms 1 and 2 will be provided by TAPS as part of the solicitation documents.

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

Attachment 6

Certification Forms

To view the Texas Unified Certification Program Letter of Agreement, please visit the following website:

<http://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html>

Attachment 7

Regulations: 49 CFR Part 26

For a full listing of regulations for the Disadvantaged Business Enterprise, please visit the following website: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

Texoma Area Paratransit System (TAPS)

Resolution No. 23-2020

**BOARD APPROVAL OF TAPS' Disadvantaged Business Enterprise Plan
and Goal for Fiscal Year 2021**

WHEREAS, TAPS is a government entity in the state of Texas that provides rural transportation services in six counties across North Central Texas and receives funds from Texas DOT; and

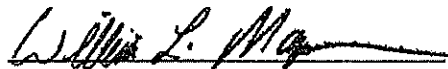
WHEREAS, TAPS is a public transit agency that receives federal funds under federal "5307" Urbanized Area Formula Program funding; and

WHEREAS, TAPS is required to maintain a DBE program and develop an annual goal based on funding threshold;

NOW THEREFORE BE IT RESOLVED THAT:

The Board adopts and approves the update to the DBE Plan and Goal for FY 2021 as presented.

**PASSED, APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE
TEXOMA AREA PARATRANSIT SYSTEM ON THIS 18TH DAY OF November 2020.**



Bill Magers, Board Chair

Attest:

